

Office of Chief Counsel
Internal Revenue Service
memorandum

CC:NER:NED:BOS:TL-N-2775-99
MASullivan

date: September 1, 1999

to: District Director, New England District
Attn: Joel Michaud, Team Coordinator

from: Assistant District Counsel, New England District, Boston

subject:

[REDACTED]

Disclosure to transferee
U.I.L. #6103.05-00

THIS DOCUMENT MAY CONTAIN CONFIDENTIAL INFORMATION SUBJECT TO THE ATTORNEY-CLIENT AND DELIBERATIVE PROCESS PRIVILEGES, AND MAY ALSO HAVE BEEN PREPARED IN ANTICIPATION OF LITIGATION. THIS DOCUMENT SHOULD NOT BE DISCLOSED TO ANYONE OUTSIDE THE INTERNAL REVENUE SERVICE, INCLUDING THE TAXPAYER INVOLVED, AND ITS USE WITHIN THE INTERNAL REVENUE SERVICE SHOULD BE LIMITED TO THOSE WITH A NEED TO REVIEW THE DOCUMENT IN RELATION TO THE SUBJECT MATTER OF THE CASE DISCUSSED HEREIN. THIS DOCUMENT IS ALSO TAX INFORMATION OF THE INSTANT TAXPAYER THAT IS SUBJECT TO I.R.C. § 6103.

This responds to your request for written advice on whether you can discuss the issues you have raised in this case directly with officials from The [REDACTED] ([REDACTED]) without violating section 6103 of the Internal Revenue Code.

Facts

[REDACTED] was the parent of a consolidated group ([REDACTED]). On [REDACTED] [REDACTED] sold the stock of its subsidiary [REDACTED] to [REDACTED]. [REDACTED] elected under section 338(g) to treat the stock purchase as an asset purchase for purposes of subtitle A of the Code. [REDACTED] was dissolved on [REDACTED] and its three year winding up period ended on [REDACTED].

At the time of the sale to [REDACTED] and continuing until the dissolution of [REDACTED] [REDACTED] was [REDACTED]'s controlling shareholder through shares it owned directly and shares it owned indirectly through a partnership. As a direct and indirect

shareholder of [REDACTED] received net cash distributions of approximately \$ [REDACTED] from the sale to [REDACTED]. You have been informed that under the merger agreement, [REDACTED] is responsible for any additional federal income tax that may be due from [REDACTED] for the period prior to the merger.

You are currently examining returns of the [REDACTED] group for the taxable periods ended [REDACTED] and [REDACTED]. [REDACTED] and [REDACTED] were severally liable for the consolidated tax liability of the [REDACTED] group. Pursuant to prior advice from this office, and prior to the expiration of the winding up period of [REDACTED], you notified its liquidating trustee that you were breaking agency under section 1.1502-77(a) of the Income Tax Regulations. You obtained extensions of the statute of limitations for both of the taxable years in issue from the liquidating trustee on behalf of [REDACTED], and from [REDACTED] to [REDACTED].

We have previously advised you that as a transferee of [REDACTED] [REDACTED] is secondarily liable for the consolidated tax liability of the [REDACTED] group under section 6901. See Memorandum from District Counsel, New England to District Director, New England District 2,3 (Oct. 23, 1998). Until the winding up period expired, you discussed the issues arising in this case with the liquidating trustee on behalf of [REDACTED], and with the tax department of [REDACTED]. [REDACTED] officials have asked that you now communicate directly with them regarding the remaining issues, because [REDACTED] is ultimately responsible for any tax liability resulting from your examination. For convenience and to facilitate promptly concluding your examination, you would prefer to discuss some matters directly with [REDACTED] rather than necessarily communicating through officials from [REDACTED]. You requested our advice whether under section 6103 you can communicate directly with [REDACTED] as you attempt to resolve the remaining issues.

Law & Analysis

Section 6103(a) generally prohibits the disclosure of any return or return information by any officer or employee of the United States obtained in connection with service as an officer or employee.

Section 6103(e) concerns the disclosure of return or return information to a person having a material interest. Section 6103(e)(1)(D)(vi) provides that in the case of a return of a corporation or a subsidiary thereof, if the corporation has been dissolved, its return shall, upon written request, be open to inspection by or disclosure to any person whom the Secretary finds to have a material interest which will be affected by the

information contained therein. Section 6103(e)(7) provides that return information with respect to any taxpayer may be open to inspection by or disclosure to any person authorized by section 6103(e) to inspect any return of such taxpayer if the Secretary determines that such disclosure would not seriously impair federal tax administration.

Delegation Order 156 (Rev. 15, 8/5/98) and Exhibit 2, delegates the authority to permit disclosure under section 6013(e) to District Director in cases under their jurisdiction. After we provided oral advice to you on this matter, you contacted the disclosure officer for the New England District, who informed you that this authority has been redelegated to revenue agents.

Because of its potential liability under section 6901 as a transferee of [REDACTED], [REDACTED] appears to have a material interest that will be affected by the information contained in the returns of the [REDACTED] consolidated group for the taxable years ended [REDACTED] and [REDACTED]. If [REDACTED] requests in writing to discuss the issues on these returns with you, and you determine that disclosure of return information would not seriously impair federal tax administration, you can discuss them without violating section 6103. Because [REDACTED] has primary liability for any tax due on these returns, [REDACTED] would have to approve any settlement at which you arrive.

DAVID N. BRODSKY
Assistant District Counsel